IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5131 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAISINH BHIKHABHAI MAHIDA

Versus

DISTRICT MAGISTRATE

Appearance:

Ms. Banna Dutta for Mr. I.H. Saiyed for Petitioner

Mr. A.J. Desai, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 24/01/2000

ORAL JUDGEMENT

Heard learned Advocate Ms. Banna Dutta for Adv. Mr. I.H. Saiyed for the petitioner and learned AGP Mr. A.J. Desai for the respondents nos. 1, 2 and 3.

1 The detention order dated 26-4-1999 passed by the District Magistrate, Baroda (the respondent no.1) against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985("PASA" for short) is challenged in the present petition filed under Article 226 of the Constitution of India.

2. The grounds of detention served to the petitioner under Section 9(1) of "PASA", copy of which is produced on record at Annexure "C" inter alia indicate that Criminal Cases bearing nos.105/98, 113/98 and 141/98 were registered against the petitioner at Bhadarva Police Station for the offences made puinishable under Section 461 read with Section 380 of the Indian Penal Code. All the three cases are pending investigation.

2.1 The grounds of detention further indicate that three witnesses on assurance of anonymity have given statements against the petitioner on 15-3-1999 with regard to the criminal activity of the petitioner and have related incidents alleged to have occurred prior to 15 days of the statement, one month of the statement and seven days of the statement respectively.

3. That in consideration of the aforesaid material, the detaning authority has come to the conclusion that the petitioner is a "dangerous person" within the meaning of Section 2(c) of " PASA". That resort to general provisions of law being insuffcient to prevent the petitioner from continuing his antisocial activity and as such, the impugned order is passed.

4. The petitioner has challenged the impugned order on numerous grounds. It has been contended on behalf of the petitioner at the Bar that the impugned order is bad in law on account of unexplained inordinate delay in taking action by passing the impugned order. In the facts and circumstances of the case, it is urged that the last offence registered against the petitioner is dated 20-12-1998. The petitioner was released on bail in the said case on 9-1-1999. Thereafter statement of witnesses appears to have been recorded on 15-3-1999 wherein incidents prior to 15 days, one month and 7 days respectively are alleged to have been referred to. However, the detaining authority has passed the impugned order on 26-4-1999. That said delay has not been explained either in the grounds of detention or by filing a separate affidavit by the respondent no.1 or any of the respondents, and as such, the order is bad.

5. In the matter of PRADEEP NILKANTH PATURKAR VS. S. RAMAMURTHY & ORS (AIR 1994 SC 656), the Supreme Court has held that unexplained delay of five months and six days in passing the detention order from the date of registered offence which is the base for passing the order, the order is rendered invalid on account of the live link between the alleged activity and the impugned action taken having been snapped.

5.1 That this Court in the case of ELESH PATEL VS. COMMISSIONER OF POLICE (1997(1) G.L.H. 381 has also expressed the aforesaid view that where the live link between the alleged antisocial activity of the petitioner and the date on which the impugned action is taken is snapped, the detention order passed on the basis of registered case is invalid..

6. In the instant case, the grounds of detention is devoid of any explanation as to despite the petitioner having been releasedon bail on 9-1-1999 in an offence registered on 20-12-1998 and information received from anonymous witnesses on 15-3-1999 what facts are responsible for causing delay in taking action on 26-4-1999. As there is no explanation, much less, a reasonable explanation, the inordinate delay in taking action has vitiated the subjective satisfaction rendering the impugned order invalid.

7. As the petition succeeds on the aforesaid grounds, it is not necessary to consider and decide the other contentions raised in the petition.

8. On the basis of the aforesaid discussion, the petition is allowed. The impugned order of detention dated 26-4-1999 passed by the District Magistrate , Baroda, (respondent no.1) is hereby quashed and set aside. The petitioner-detenu-Raisinh Bhikhabhai Mahida is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly.

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